

FINANCIAL IMPACT:

Finance Dept. Comments if applicable:

**Proposed Text Amendments
Statements of Compliance**

TO APPROVE:

(1) Amendment to Extend the 12-Month Moratorium on Major Residential Development.

Whereas, in accordance with provisions of N C GS 153A-341, the Board of County Commissioners does hereby find and determine that adoption of the proposed text amendment is consistent with the adopted Union County Land Use Plan, and that adoption of the proposed text amendment is reasonable and in the public interest because it provides additional time necessary for the Board to complete ongoing efforts to resolve issues related to rapid population growth, public school overcrowding, and public school facility financing as described in the proposed amendment.

(2) Amendment to Article XVI Part I. Floodways and Floodplains.

Whereas, in accordance with provisions of N C GS 153A-341, the Board of County Commissioners does hereby find and determine that adoption of the proposed text amendment is consistent with the adopted Union County Land Use Plan, and that adoption of the proposed text amendment is reasonable and in the public interest because it preserves floodplains that can be used for open space, greenways, parks, and storm water management.

(3) Amendment to Section 114 Penalties and Remedies for Violations.

Whereas, in accordance with provisions of N C GS 153A-341, the Board of County Commissioners does hereby find and determine that adoption of the proposed text amendment is consistent with the adopted Union County Land Use Plan, and that adoption of the proposed text amendment is reasonable and in the public interest because it strengthens the mechanisms available for enforcing the Union County's Land Use Ordinance.

TO DENY:

(1) Amendment to Extend the 12-Month Moratorium on Major Residential Development.

Whereas, in accordance with provisions of N C GS 153A-341, the Board of County Commissioners does hereby find and determine that denial of the proposed text amendment is consistent with the adopted Union County Land Use Plan, and that denial of the proposed text amendment is reasonable and in the public interest due to its impact on individual developers and builders within Union County.

(2) Amendment to Article XVI Part I. Floodways and Floodplains.

Whereas, in accordance with provisions of N C GS 153A-341, the Board of County Commissioners does hereby find and determine that denial of the proposed text amendment is consistent with the adopted Union County Land Use Plan, and that

denial of the proposed text amendment is reasonable and in the public interest due to its impact on property owners with a large amount of designated floodplain in relationship to the total size of their property.

(3) Amendment to Section 114 Penalties and Remedies for Violations.

Whereas, in accordance with provisions of N C GS 153A-341, the Board of County Commissioners does hereby find and determine that denial of the proposed text amendment is consistent with the adopted Union County Land Use Plan, and that denial of the proposed text amendment is reasonable and in the public interest due to the amount of the increase in the cost of penalties for violations of the Land Use Ordinance.

DRAFT

DRAFT

**FROM THE SPECIAL PLANNING BOARD MEETING
HELD ON TUESDAY, JUNE 20, 2006**

Motion was made by Robert Allen to approve the text amendment as written with a friendly amendment of 15 lots. Mark DiBiasio seconded the motion. Chairman King noted that it would be better to approve or not approve the text amendment as written and send a suggestion to the County Commissioners to look at changing the number of lots. Robert Allen withdrew his original motion.

David Vandenabeele made a motion to accept the text as written to extend the Building Moratorium up to November 7, 2006 or until the APFO is in place. Lee Godwin seconded the motion. The vote was 6 to 1.

Motion was made by Liza Kravis and seconded by Mark DiBiasio to make a suggestion to the County Commissioners that the Building Moratorium be changed so that 15 lots could be included in the same time frame as the Building Moratorium extending the exclusion of up to 15 lots for Major Residential Developments.

Robert Allen asked for a call to question: To vote on the motion: the vote was 7 to 0.

The vote on the motion was 4 to 3. The motion passed.

**AMENDMENT TO THE UNION COUNTY LAND USE ORDINANCE
EXTENDING THE 12-MONTH MORATORIUM
ON MAJOR RESIDENTIAL DEVELOPMENT**

WHEREAS, pursuant to N.C.G.S. § 153A-121, the Union County Board of Commissioners (the “Board”) may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens; and

WHEREAS, pursuant to N.C.G.S., Chapter 153A, Article 18, the Board may enact zoning and land use regulations; and

WHEREAS, pursuant to N.C.G.S. § 153A-340(h), effective September 1, 2005, the Board is expressly authorized to adopt and extend temporary moratoria on any county development approval required by law; and

WHEREAS, on August 15, 2005, the Board adopted a twelve (12) month moratorium (the “Moratorium”) on Major Residential Development (defined below in Section 1 of this Amendment) based on the following conditions, which continue to exist and have, in some instances, worsened:

■ Population Growth. U.S. Census Bureau data shows that during the 20-year period between 1980 and 2000, Union County’s population rose from 70,380 to 123,677 residents, an increase of more than 75%. For the year beginning July 1, 2003, and ending June 30, 2004, Union County’s population increased from 145,980 to 153,652, making Union the 12th fastest growing county in the United States by percentage growth among counties with populations exceeding 100,000. By the year 2020, North Carolina State Demographics project Union County’s population to reach 244,044, representing a 97% increase between the years 2000 and 2020.

■ Public School Overcrowding. Union County’s rapid population increase has led to overcrowding in the County’s public schools. During the 2004-2005 school year, student enrollment at over 70% of Union County’s public schools exceeded capacity levels, according to an “Out-of-Capacity” worksheet prepared by the Operations Research Education Laboratory (OR/Ed. Lab) at North Carolina State University in October, 2004.

■ New School Construction Costs. The Union County Public Schools’ Capital Improvement Plan reflects expenditures for school construction between July 1, 2006, and June 30, 2011, currently estimated at approximately Six Hundred Million Dollars, up almost Eighty Million Dollars from the Capital Improvement Plan for July 1, 2005 through June 30, 2010, in effect at the time of adoption of the Moratorium.

■ Revenue Deficit. According to a study completed in December, 2004 (Local Government Fiscal Impacts of Land Uses in Union County, Dorfman Consulting, December 2004), for every additional \$1.00 that Union County collects in revenues as a result of new residential

growth, the County spends approximately \$1.30 in public facilities and services to accommodate that growth.

■ Majority of Tax Revenues Spent on Education. Educational expenditures are expected to account for 63% of the property tax revenues the County collects in 2007, as reflected in the Manager's Recommended Budget 2006-2007. This is up from 59% of property tax revenues for the 2006 budget, in effect at the time of adoption of the Moratorium. Educational expenditures account for similar percentages of the County's local option sales tax revenues and interest income.

■ Inability to Regulate Residential Growth Within Municipalities. There are 14 municipalities located in Union County, 12 of which have independent zoning and land use authority. Municipal governments, however, share none of the County's responsibility for funding public school facilities.

■ Need for New Growth Strategies. The Board has determined that a critical need exists for more effective residential growth strategies in Union County, and it is committed to developing land use regulations that will enable the County to better coordinate residential growth with the County's ability to provide adequate public school facilities, in order to protect and promote the public health, safety, and welfare, and to maintain a high quality of life for Union County residents; and

WHEREAS, prior to adopting the Moratorium, the Board attempted alternative courses of action to address the conditions described above, including the following:

■ Impact Fees. Adopted resolutions in 1998, 2000, and again in 2005, supporting special legislation that would enable Union County to impose impact fees upon new residential development. Authority for impact fees has not been granted.

■ Impact Tax. Adopted a resolution in May of 2005, in support of legislation that would allow North Carolina counties to impose an impact tax on new residential development. Authority for an impact tax has not been granted.

■ Economic Development. Established Union County Partnership for Progress, an economic development corporation, and supported the County's economic development efforts in order to encourage a greater percentage of commercial and industrial development in Union County, which would lead to increased tax revenues without the increase in demand for public schools created by residential development. UCPP has recently cautioned that its progress will be slow.

■ Density Bonus Repealed. Repealed "Smart Growth" provisions of the Union County Land Use Ordinance that allowed subdivision developers to increase density if their projects conformed to certain subdivision design requirements, such as sidewalks, street lights, street connectivity, and storm water controls; and

WHEREAS, the Board adopted and now seeks to extend the Moratorium in order to temporarily halt further Major Residential Development approvals while the Board works to complete development of an Adequate Public Facilities Ordinance (“APFO”) for public schools and to explore other possible mechanisms that would enable Union County to manage residential growth so that the demand for public school facilities created thereby does not continue to outpace the County’s ability to provide such facilities; and

WHEREAS, the Board adopted and now seeks to extend the Moratorium to prevent the approval and ultimate construction of an unlimited number of Major Residential Development projects that would otherwise be approved and constructed without taking into consideration Union County’s ability to provide adequate public school facilities to accommodate the demand for public schools generated by such projects, and to thereby prevent a further widening of the existing gap between increased demand for public schools and the County’s ability to keep pace with that demand; and

WHEREAS, since adopting the Moratorium, the Board and its staff have worked diligently toward development of an APFO, including but not limited to the following steps:

- After mailing Requests for Proposals to 19 professional consulting firms and interviewing the top two firms, Union County engaged White & Smith, LLC (the “Consultant”) to assist in the development of an APFO;
- Union County staff gave at least one APFO presentation to each of the following: Union County Homebuilders Association; Union County Board of Education; Union County Planning Board; Union County Chamber of Commerce; and Union County Partnership for Progress;
- Union County obtained a Resolution of Participation in the APFO Study Process from each of the 12 municipalities in Union County with independent zoning authority (the “Participating Municipalities”);
- Representatives from Union County, the Union County Public Schools, and the Participating Municipalities formed an APFO Task Force (the “Task Force”);
- The Task Force held four meetings with the Consultant, and the Task Force held an additional meeting without the Consultant, to work on APFO-related issues, including but not limited to: adequacy standards and formulas, service districts, procedures, remedies, mitigation, reservation of capacity, and exemptions;
- Union County staff also held a total of four meetings with the Consultant, in person and via teleconference, to work on APFO-related issues;
- Union County staff held two meetings with representatives from the Union County Board

of Education, one of which included the Consultant, to work on APFO-related issues;

- Union County staff met an additional two times to work on the APFO;
- The Consultant presented the Board a draft APFO at the Board's meeting on June 5, 2006; and

WHEREAS, although the Board has taken all reasonable and feasible steps to adhere to the 12-month schedule set forth in the Moratorium for addressing the problems and conditions leading to adoption of the Moratorium, the APFO development process has required more meetings of the Task Force and more meetings with the Consultant than initially contemplated, the process of developing an APFO in final draft form, an exceedingly complex document, has taken longer than anticipated, and thus provision of the APFO for consideration and implementation by the Participating Municipalities, whose cooperation is critical, has been unavoidably delayed; and

WHEREAS, on June 5, 2006, and June 19, 2006, the Board approved a revised schedule for completing development of an APFO that includes the following key dates:

- July 10: Board holds APFO work session with Consultant, to include involvement of Participating Municipalities and Planning Board
- August 1: Planning Board considers APFO
- August 2 – Sept. 4: Planning Board holds additional meetings, as it deems necessary
- Sept. 5: Planning Board issues recommendations
- Sept. 6-26: Consultant finalizes and formats APFO
- Oct. 3 & 10: Notice of public hearing is published
- Oct. 16: Board holds public hearing
- Nov. 6: Board takes final action on APFO
- Nov. 7: Moratorium, as extended, expires.

NOW, THEREFORE, BE IT ORDAINED by the Union County Board of Commissioners as follows:

1. The Moratorium adopted by the Board on August 15, 2005, which is currently scheduled to expire on August 15, 2006, shall be extended until November 7, 2006, or until the day following final action by the Board on the APFO if final action occurs prior to November 6, 2006 (the "Extension Period").

For purposes of this Amendment, the term “Major Residential Development” refers to any undertaking that would result in the creation of more than five residential lots or more than five dwelling units, including by way of illustration but not limitation: major subdivisions; multi-family dwellings; duplexes; apartment houses; and manufactured home parks and subdivisions. This term also refers to any undertaking that would result in the creation of more than five residential lots or more than five dwelling units if the proposed project were combined with any adjacent project approved during the Moratorium period, including the Extension Period, and sharing a common owner or developer.

The Moratorium does not apply to the following:

- A. Those projects for which a valid zoning/building, special use, conditional use, or major development permit was issued before the Board adopted the Moratorium. Such projects may be constructed in accordance with the terms of such permit, so long as the issued permit remains unexpired and unrevoked; provided, however, that if a project is intended to be constructed in phases or sections, the project may move forward only with respect to those phases or sections for which a valid zoning/building, special use, conditional use, or major development permit was issued before the Board adopted the Moratorium.
- B. Those projects for which a completed application for a zoning/ building, special use, conditional use, or major development permit was filed before the Board adopted the Moratorium, but for which the requested permit was not issued before such date, so long as the requested permit is or was issued within one year from the date of application. Such projects will be treated as though the requested permit was issued before the Board adopted the Moratorium. If a project is intended to be constructed in phases or sections, the project may move forward only with respect to those phases or sections for which a completed application was submitted before the Board adopted the Moratorium. An application shall be considered completed if the application fee has been paid, if required, and the application is in appropriate form and contains sufficient information so that it would normally be accepted for processing by the County. If the permit applied for is validly denied, or if no final action is taken on the permit application within one year of the application date due to lack of diligence on the part of the applicant, or if the permit is issued but later expires or is revoked, then all future applications regarding the subject property shall be subject to the Moratorium throughout the Moratorium period, including the Extension Period.
- C. Nursing Care Homes or Institutions; Handicapped, Aged or Infirm Homes or Institutions; Group Care Homes or Facilities; Family Care Homes; Independent Living Centers; Continuing Care Facilities; Intermediate Care Homes and Facilities; Housing for Older Persons (as defined in N.C.G.S. § 41A-6(e)(3)); Continuing Care Retirement Communities (as defined in N.C.G.S. § 58-64-1); Half-way houses; Orphanages; Sorority or fraternity living quarters; and Dormitories associated with colleges or universities.

2. Throughout the Moratorium period, including the Extension Period, all Union County departments and boards, all divisions and agencies therein, and all officers, employees, and members of the same (including but not limited to: the Planning Division Director and his staff; the Director of Inspections and his staff; the Land Use Administrator; the Planning Board and its members; and the Board of Adjustment and its members) shall cease accepting and processing all applications or other forms of requests ("applications") for permits or other forms of approval ("permits" or "approvals") associated with Major Residential Development. Applications subject to the Moratorium include, by way of illustration but not limitation: sketch plans for major subdivisions submitted to Planning Staff; applications for major development permits for major subdivisions submitted to the Planning Board; applications for building permits for multi-family dwellings submitted to the Inspections Department; applications for special use permits for residential development projects not permitted by right in the applicable zoning district submitted to the Board of Adjustment; and sketch plans for minor subdivisions exceeding five lots submitted to the Planning Director.
3. This Amendment for an extension of the Moratorium shall become effective upon adoption and shall be incorporated into the Union County Land Use Ordinance as Appendix I.
4. To the extent that any provision of this Amendment is inconsistent, or could be construed as inconsistent, with any provision of the Union County Land Use Ordinance, such inconsistency shall be resolved in favor of the provision that most closely serves the goals of the Moratorium and this Amendment.

Adopted this the ____ day of _____, 2006.

**UNION COUNTY
BOARD OF COMMISSIONERS**

ACTION AGENDA ITEM ABSTRACT

Meeting Date: 07/24/06

Action Agenda Item No. 46
(Central Admin. use only)

SUBJECT: Text Amendment Section 114 Penalties and Remedies for Violations and Adoption of Compliance Statements per G.S. 153A-341

DEPARTMENT: Planning

PUBLIC HEARING: No

ATTACHMENT(S):

Text Amendment Section 114
Penalties and Remedies for Violations

Chart of Civil Penalties for Zoning
Violations

Motion and vote from Union County
Planning Board

INFORMATION CONTACT:

Richard Black

TELEPHONE NUMBERS:

(704) 292-2580

DEPARTMENT'S RECOMMENDED ACTION: To consider amending Section 114 Penalties and Remedies for Violations and adopting Compliance Statements per G.S. 153A-341.

BACKGROUND: At the February 7, 2006 regular scheduled Planning Board meeting, the Planning Board recommended increasing penalties for violations of the Land Use Ordinance. Staff presented information on penalties for zoning violations from the surrounding counties (See Attached Chart). The Planning Board voted 7 to 0 to recommend increasing penalties for the first citation of a violation from \$25 to \$50, for second citation from \$50 to \$200, and for third citation and subsequent citations for same offense from \$100 to \$500. The Planning Board also advises that this proposed amendment is consistent with the Union County Land Use Plan and the fee structure is in compliance with the NC General Statutes. On July 10, 2006, the Board of County Commissioners held a public hearing to receive comments from the public concerning the increases in penalties for zoning violations. After a staff presentation of the text amendment, no one spoke in opposition to or in favor of the proposed text amendment.

FINANCIAL IMPACT:

Legal Dept. Comments if applicable:

Finance Dept. Comments if applicable:

Manager Recommendation:

**Proposed Text Amendments
Statements of Compliance**

TO APPROVE:

(1) Amendment to Extend the 12-Month Moratorium on Major Residential Development.

Whereas, in accordance with provisions of N C GS 153A-341, the Board of County Commissioners does hereby find and determine that adoption of the proposed text amendment is consistent with the adopted Union County Land Use Plan, and that adoption of the proposed text amendment is reasonable and in the public interest because it provides additional time necessary for the Board to complete ongoing efforts to resolve issues related to rapid population growth, public school overcrowding, and public school facility financing as described in the proposed amendment.

(2) Amendment to Article XVI Part I. Floodways and Floodplains.

Whereas, in accordance with provisions of N C GS 153A-341, the Board of County Commissioners does hereby find and determine that adoption of the proposed text amendment is consistent with the adopted Union County Land Use Plan, and that adoption of the proposed text amendment is reasonable and in the public interest because it preserves floodplains that can be used for open space, greenways, parks, and storm water management.

(3) Amendment to Section 114 Penalties and Remedies for Violations.

Whereas, in accordance with provisions of N C GS 153A-341, the Board of County Commissioners does hereby find and determine that adoption of the proposed text amendment is consistent with the adopted Union County Land Use Plan, and that adoption of the proposed text amendment is reasonable and in the public interest because it strengthens the mechanisms available for enforcing the Union County's Land Use Ordinance.

TO DENY:

(1) Amendment to Extend the 12-Month Moratorium on Major Residential Development.

Whereas, in accordance with provisions of N C GS 153A-341, the Board of County Commissioners does hereby find and determine that denial of the proposed text amendment is consistent with the adopted Union County Land Use Plan, and that denial of the proposed text amendment is reasonable and in the public interest due to its impact on individual developers and builders within Union County.

(2) Amendment to Article XVI Part I. Floodways and Floodplains.

Whereas, in accordance with provisions of N C GS 153A-341, the Board of County Commissioners does hereby find and determine that denial of the proposed text amendment is consistent with the adopted Union County Land Use Plan, and that

denial of the proposed text amendment is reasonable and in the public interest due to its impact on property owners with a large amount of designated floodplain in relationship to the total size of their property.

(3) Amendment to Section 114 Penalties and Remedies for Violations.

Whereas, in accordance with provisions of N C GS 153A-341, the Board of County Commissioners does hereby find and determine that denial of the proposed text amendment is consistent with the adopted Union County Land Use Plan, and that denial of the proposed text amendment is reasonable and in the public interest due to the amount of the increase in the cost of penalties for violations of the Land Use Ordinance.

At their regularly scheduled meeting held on Tuesday, February 7, 2006, the Planning Board discussed Civil Penalties for Zoning Violations.

Motion was made by Mark DiBiasio and seconded by David Vandenabeele to adopt the following penalties for zoning violations:

Warning Citation – Correct Violation Within 10 Days
First Citation \$50.00
Second Citation \$200.00
Third and Subsequent Citations for Same Offense \$500.00

The vote was 7 to 0.

Motion was made by Jim King and seconded by Mark DiBiasio to adopt the following amendment for support:

Section 114 Penalties and Remedies for Violations
Fees are part of the implementation of the Union County Land Use Plan.
Therefore, any fee structure in compliance with the NC General Statutes is consistent with the Union County Land Use Plan.

The vote was 7 to 0.

Section 114 Penalties and Remedies for Violations.

- (a) Violations of the provisions of this ordinance or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variances or special use permits, or conditional use permits shall constitute a misdemeanor, punishable by a fine of up to five hundred dollars or a maximum thirty days imprisonment as provided in G.S. 14-4.
- (b) Any act constituting a violation of the provisions of this ordinance or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the grants of variances or special or conditional use permits, shall be subject to penalties. The following penalties are hereby established:

Warning Citation - Correct Violation Within 10 days
First Citation - ~~\$25.00~~ **\$50.00**
Second Citation - ~~\$50.00~~ **\$200.00**
Third and Subsequent Citations
For Same Offense - ~~\$100.00~~ **\$500.00**

If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered by the county in a civil action in the nature of debt. A civil penalty may not be appealed to the board of adjustment if the offender was sent a final notice of violation in accordance with Section 113 and did not take an appeal to the board of adjustment within the prescribed time.

- (c) This ordinance may also be enforced by any appropriate equitable action.
- (d) Each day that any violation continues after notification by the administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section.
- (e) In addition, pursuant to North Carolina Statute 160A-175, the County may seek a mandatory or prohibitory injunction and an order of abatement commanding the offender to correct the unlawful condition upon or cease the unlawful use of the subject premises.
- (f) Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this ordinance.

Civil Penalties for Zoning Violations

	1st Day	2nd Day	3rd Day	Thereafter
Union County	\$ 25.00	\$ 50.00	\$ 100.00	\$ 100.00
Mecklenburg County	\$ 50.00	\$ 200.00	\$ 500.00	\$ 500.00
Cabarrus County	\$ 100.00	\$ 200.00	\$ 400.00	\$ 400.00
Anson County	Max \$500.00	Max \$500.00	Max \$500.00	Max \$500.00
Stanly County	\$ 50.00	\$ 200.00	\$ 500.00	\$ 500.00

UNION COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT

Meeting Date: 07/24/06

Action Agenda Item No. 4c
(Central Admin. use only)

SUBJECT: Text Amendment Article XVI Part I. Floodways and Floodplains and
Adoption of Compliance Statements per G.S. 153A-341

DEPARTMENT: Planning

PUBLIC HEARING: No

ATTACHMENT(S):
Text Amendment Article XVI Part I.
Floodways and Floodplains

INFORMATION CONTACT:
Richard Black

Motion and vote from Union County
Planning Board

TELEPHONE NUMBERS:
(704) 292-2580

DEPARTMENT'S RECOMMENDED ACTION: To consider amending Article XVI Part I.
Floodways and Floodplains and adopting Compliance Statements per G.S. 153A-341.

BACKGROUND: At the February 7, 2006 regular scheduled Planning Board meeting, the Board recommended prohibiting encroachments (fill, new construction/development, substantial improvements, and artificial obstructions) in the floodways and floodplains. Some uses, such as general farming, golf courses, limited stream crossings for roads and railroads, and utility type infrastructure, are premissible under certain conditions and/or FEMA approval. The Planning Board voted 6 to 1 to recommend the attached text amendment. The Planning Board also advises that this proposed amendment is consistent with the Union County Land Use Plan by preserving floodplains that could be used for open space, greenways, parks and scenic views. On July 10, 2006, the Board of County Commissioners held a public hearing to receive comments from the public concerning the floodways/floodplains text amendment. After a staff presentation of the text amendment, no one spoke in opposition to or in favor of the proposed text amendment.

FINANCIAL IMPACT:

Legal Dept. Comments if applicable:

Finance Dept. Comments if applicable:

Manager Recommendation:

**Proposed Text Amendments
Statements of Compliance**

TO APPROVE:

(1) Amendment to Extend the 12-Month Moratorium on Major Residential Development.

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(2) Amendment to Article XVI Part I. Floodways and Floodplains.

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TO DENY:

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At their regularly scheduled meeting held on Tuesday, February 7, 2006, the Planning Board discussed Floodplains.

Motion was made by Jim King and seconded by Mark DiBiasio to approve the ordinance as written and to delete all sections pertaining to mobile homes including Section 254 (a) and Section 254 (b). The vote was 6 to 1.

Motion was made by Jim King and seconded by Mark DiBiasio to adopt the following amendment for support:

Part 1: Floodways and Floodplains

The amendment to Part I Floodways and Floodplains of the Union County Land Use Ordinance preserves the floodplain by prohibiting encroachments (fill, construction and substantial improvements) in the floodplain.

The proposed amendment preserves land for open space, greenways, and parks and scenic views, as well as protecting the rural character of the County which are all consistent with the Union County Land Use Plan.

The vote was 6 to 1.

ARTICLE XVI
FLOODPLAINS, DRAINAGE, STORM WATER MANAGEMENT

Part I. Floodways and Floodplains

Terms used in Article XVI, Part I are defined in Section 15 of this Ordinance.

Section 251 Reserved

Section 252 ~~Encroachments~~ Artificial Obstructions Within Floodways and Floodplains Prohibited.

- (a) ~~No artificial obstruction may be located within any floodway, except as provided in Section 253.~~
- (b) **No encroachments, including but not limited to (i) fill, (ii) new construction, (iii) substantial improvements (as defined in Section 254(a)), (iv) new development, and (v) artificial obstructions, may be permitted within floodways and floodplains, except as provided in Section 253.** For purposes of this section, an artificial obstruction is any obstruction, other than a natural obstruction, that is capable of reducing the flood carrying capacity of a stream or may accumulate debris and thereby reduce the flood carrying capacity of a stream. A natural obstruction includes any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodway or floodplain by a non-human cause.

Section 253 Permissible Uses Within Floodways and Floodplains.

- (a) Notwithstanding Article X of this chapter (Table of Uses), no permit to make use of land within a floodway or floodplain may be issued unless the proposed use is listed as allowed both in the Table of Uses and in the following list: **below:**
 - (1) General farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses.
 - (2) Ground level streets, roads, loading areas, parking areas, rotary aircraft ports, and other similar ground level area uses.
 - (3) Lawns, gardens, play areas, and other similar uses.
 - (4) Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, hiking or horseback riding trails, open space and other similar private and public recreational uses.

- (5) Limited crossings for driveways, streets, roads, highways, and railroad crossings and associated bridge components.
- (6) Overhead and underground utility crossings where crossings should be made perpendicular to the stream to the extent practicable.
- (7) Gravity flow municipal sanitary sewers where no practicable alternative exists.
- (8) Stormwater best management practices.
- (9) Fences, provided that disturbance is minimized and where installation does not result in the removal of vegetation.
- (10) Dam maintenance activities.
- (11) Stream restoration activities.
- (12) Water dependent structures.
- (b) The uses listed in subsections (a)(1) to (a)(4) are permissible only if and to the extent that they do not cause neither any increase in base flood levels, nor change in floodway widths or floodplain widths.
- (c) The uses listed in subsections (a)(1) to (a)(12) are permissible only if approved by FEMA, provided that such approval is required.

Section 254 Construction Within Floodways and Floodplains Restricted.

- ~~(a) No zoning, special use or conditional use permit may be issued for any development within a floodplain until the permit-issuing authority has reviewed the plans prepared by a registered architect or engineer, and bears a registered seal, for any such development to assure that:~~
 - ~~(1) The proposed development is consistent with the need to minimize flood damage; and~~
 - ~~(2) All public utilities and facilities such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and~~
 - ~~(3) Adequate drainage is provided to minimize or reduce exposure to flood hazards; and~~
 - ~~(4) All necessary permits have been received from those agencies from which approval is required by federal or state law.~~

- ~~(b)~~ **(a)** No building may be constructed and no substantial improvement of an existing building may take place within any floodway **or floodplain**. With respect to manufactured home parks that are nonconforming because they are located within a floodway, manufactured homes may be relocated in such parks only if they comply with the provisions of subsection (i). **For purposes of this section, "substantial improvement" means any repair, reconstruction, or improvement of a building the cost of which equals or exceeds fifty percent of the market value of the structure either (i) before the improvement or repair is started or (ii) if the structure has been damaged and is being restored, before the damage occurred. "Substantial improvement" occurs when the first alteration on any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include either (i) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that are solely necessary to insure safe living conditions, or (ii) any alteration of a building listed on the National Register of Historic Places or a State Inventory of Historic Places.**
- ~~(c)~~ — No new residential building may be constructed and no substantial improvement of a residential building may take place within any floodplain unless the lowest floor (including basement) of the building or improvement is elevated no lower than two (2) feet above the base flood level. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided.
- ~~(1)~~ — Residential accessory structures shall be allowed within floodplains provided they are firmly anchored to prevent flotation, designed to have low flood potential and placed on the building site so as to offer minimum resistance to the flow of floodwaters.
- ~~(2)~~ — Anchoring of any accessory buildings may be done by bolting the building to a concrete slab or by over the top ties. When bolting to a concrete slab, one-half inch bolts six feet on center with a minimum of two per side shall be required. If over the top ties are used a minimum of two ties with a force adequate to secure the building is required.
- ~~(3)~~ — Service facilities such as electrical and heating equipment shall be elevated or flood-proofed.
- ~~(d)~~ — No new nonresidential building may be constructed and no substantial improvements of a nonresidential building may take place within any floodplain unless the lowest floor (including basement) of the building or improvement is elevated or flood-proofed no lower than two (2) feet above the base flood level. Structures located in A-zones may be flood-proofed in lieu of elevation provided that all areas of the structure below the required elevation are water tight with walls

substantially impermeable to the passage of water, using structural components having the capacity of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that standards of this section are satisfied.

- (e) ~~When base flood elevation data is not available from a federal, state or other source, the lowest floor including basement, in subsection (c) or (d) above, shall be elevated at least two (2) feet above the highest adjacent grade.~~
- (f) ~~No new construction and no substantial improvements of a structure may take place within any floodplain unless fully enclosed areas below the lowest floor that are subject to flooding are designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum requirements:~~
 - (1) ~~A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided,~~
 - (2) ~~The bottom of all openings shall be no higher than one foot above grade; and~~
 - (3) ~~Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.~~
- (g) ~~For purposes of this section, "substantial improvement" means any repair, reconstruction, or improvement of a building the cost of which equals or exceeds fifty percent of the market value of the structure either (i) before the improvement or repair is stated or (ii) if the structure has been damaged and is being restored, before the damage occurred. "Substantial improvement" occurs when the first alteration on any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include either (i) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that are solely necessary to insure safe living conditions, or (ii) any alteration of a building listing on the National Register of Historic Places or a State Inventory of Historic Places.~~
- (h) ~~No zoning, conditional, special use or major development permit may be issued for any development within a floodplain until the permit-issuing authority has reviewed plans prepared by a registered architect or engineer, and bear a registered seal, to assure that any new construction or substantial improvements shall be:~~

- (1) — ~~Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure, resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.~~
- (2) — ~~Constructed with materials and utility equipment resistant to flood damage.~~
- (3) — ~~Constructed by methods and practices that minimize flood damage.~~
- (4) — ~~Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.~~
- (i) — ~~Notwithstanding any other provision of this ordinance, no manufactured home may be located or relocated within that portion of the floodplain outside of the floodway unless the following criteria are met:~~
 - (1) — ~~Manufactured homes are anchored to prevent flotation, collapse, or lateral movement. For the purpose of this requirement, manufactured homes must be anchored to resist flotation, collapse, or lateral movement in accordance with the Regulations for Manufactured Homes and Modular Housing adopted by the Commissioner of Insurance pursuant to N.C.G.S. 143.143.15. Additionally, when the elevation would be met by an elevation of the chassis at least 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of this chassis is above 36 inches in height an engineering certification is required. Methods of anchoring may include, but are not limited to, use of over the top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.~~
 - (2) — ~~Lots or pads are elevated on compacted fill or by any other method approved by the administrator so that the lowest floor of the manufactured home is at or above the base flood level.~~
 - (3) — ~~Adequate surface drainage and easy access for manufactured home movers is provided.~~
 - (4) — ~~Load-bearing foundation supports such as piers or pilings must be placed on stable soil or concrete footings no more than ten feet apart, and if the support height is greater than seventy-two inches, the support must contain steel reinforcement.~~
 - (5) — ~~An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be~~

~~filed with and approved by the local administrator and the local Emergency Management Coordinator.~~

~~(6) The plans for meeting the requirements of subsection 254 (b) (1) through (5) shall be prepared by a registered architect or engineer, and bear a registered seal.~~

(+) **(b)** Whenever, **pursuant to section 253**, any portion of a floodplain is filled, ~~in with fill dirt~~, slopes shall be adequately stabilized to withstand the erosive force of the base flood.

(+) **(c)** A recreational vehicle is ready for highway use if it is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions. Recreational vehicles placed on sites with special flood hazard, zones A1-30, AH, and AE on the community's FIRM, shall either:

- (1) be on site for fewer than 180 consecutive days;
- (2) be fully licensed and ready for highway use;
- (3) meet the permit requirement and the elevation and anchoring requirements for manufactured homes in this Article, to satisfy compliance with paragraphs (b)(1) and (c)(6) of the National Flood Insurance Program Regulations, 44 C.F.R. 60.3.

Section 255 Special Provisions for Subdivisions.

- (a) An applicant for a major development permit authorizing a major subdivision and an applicant for minor subdivision final plat approval shall be informed by the administrator of the use and construction restrictions contained in Sections 252, 253, and 254 if any portion of the land to be subdivided lies within a floodway or floodplain.
- (b) Final plat approval for any subdivision containing land that lies within a floodway or floodplain may not be given unless the plat shows the boundary of the floodway or floodplain and contains in clearly discernible print the following statement: "Use of land within a floodway or floodplain is substantially restricted by Article XVI of the Union County Land Use Ordinance."
- (c) Subject to the following sentence, a major development permit for a major subdivision and final plat approval for any subdivision may not be given if:
 - (1) The land to be subdivided lies within a zone where residential uses are permissible and it reasonably appears that the subdivision is designed to create residential building lots; and

- (2) Any portion of one or more of the proposed lots lies within a floodway or floodplain; and
- (3) It reasonably appears that one or more lots described in subsections (1) and (2) of this subsection could not practicably be used as a residential building site because of the restrictions set forth in Sections 252, 253, and 254.

The foregoing provision shall not apply if a notice that the proposed lots are not intended for sale as residential building lots is recorded on the final plat, or if the developer otherwise demonstrates to the satisfaction of the authority issuing the permit or approving the final plat that the proposed lots are not intended for sale as residential building lots.

Section 256 Water Supply and Sanitary Sewer Systems in Floodways and Floodplains.

Whenever any portion of a proposed development is located within a floodway or floodplain, the agency or agencies responsible for certifying to the county the adequacy of the water supply and sewage disposal systems for the development (as set forth in Sections 239 and 241 of this ordinance) shall be informed by the developer that a specified area within the development lies within a floodway or floodplain. Thereafter, approval of the proposed system by that agency shall constitute a certification that:

- (a) Such water supply system is designed to minimize or eliminate infiltration of flood waters into it.
- (b) Such sanitary sewer system is designed to eliminate infiltration of flood waters into it and discharges from it into flood waters.
- (c) Any on-site sewage disposal system is located to avoid impairment to it or contamination from it during flooding.

Section 257 Additional Duties of Administrator Related to Flood Insurance and Flood Control.

The administrator shall:

- (a) Where base flood elevation data is available:
 - (1) Verify the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures;
 - (2) Verify, for all structures that have been flood-proofed (whether or not such structures contain a basement), the actual elevation (in relation to mean sea level) to which the structure was flood-proofed; and
 - 3) Maintain a record of all such information.

- (b) Where base flood elevation data has not been provided:
- 1) Obtain, review, and reasonably utilize any base flood elevation data available from a federal, state or other source for enforcing the requirements set forth in Part I of this article; and
 - 2) Verify and record the actual elevation constituting the highest adjacent grade, to which all new or substantially improved structures are elevated or floodproofed.
 - (3) Notify, in riverine situations, adjacent communities and the N.C. Department of Crime Control and Public Safety prior to any alteration or relocation of a watercourse, and submit copies of such notification to the Federal Insurance Administrator.
 - (4) Ensure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

Section 258 Location of Boundaries of Floodplain and Floodway Districts.

As used in this article, the terms floodplain and floodway refer in the first instance to certain areas whose boundaries are determined and can be located on the ground by reference to the specific fluvial characteristics set forth in the definitions of these terms. These terms also refer to overlay zoning districts whose boundaries are the boundaries of the floodways and floodplains shown on the maps referenced in Subsections 251(2) and (3) **Section 15 Definitions of Basic Terms: Floodplain and Floodways and Section 142 Official Zoning Map**, which boundaries are intended to correspond to the actual, physical location of floodways and floodplains. (These overlay districts thus differ from other zoning districts whose boundaries are established solely according to planning or policy, rather than physical, criteria.) Therefore, the administrator is authorized to make necessary interpretations as to the exact location of the boundaries of floodways or floodplains if there appears to be a conflict between a mapped boundary and actual field conditions. Such interpretations, like other decisions of the administrator, may be appealed to the board of adjustment in accordance with the applicable provisions of this ordinance.

Section 259 Setbacks from Streams Outside Designated Floodplains.

In any area that is located outside a designated floodplain but where a stream is located, no building or fill may be located within a distance of the stream bank equal to twenty feet on each side.

Section 260 Reserved.

Part II. Drainage, Erosion Control, Storm Water Management